

# HOUSE BILL REPORT

## SHB 2553

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### As Passed Legislature

**Title:** An act relating to regulating service contracts and guarantee protection products.

**Brief Description:** Regulating service contracts and protection product guarantees.

**Sponsors:** By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Kirby and Morrell; by request of Insurance Commissioner).

#### **Brief History:**

##### **Committee Activity:**

Financial Institutions & Insurance: 1/17/06, 2/2/06 [DPS].

##### **Floor Activity:**

Passed House: 2/13/06, 97-1.

Senate Amended.

Passed Senate: 3/3/06, 48-0.

House Concurred.

Passed House: 3/6/06, 98-0.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Defines terms including "protection product," "protection product guarantee," and "protection product guarantee provider."
- Establishes registration, financial, and record-keeping requirements for guarantee protection product providers.
- Expands the service contract chapter to include motor vehicle service contracts.
- Repeals the Chapter regulating motor vehicles service contracts.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, O'Brien, Santos, Serben, Simpson, Strow and Williams.

**Staff:** Jon Hedegard (786-7127).

## **Background:**

Insurance and insurance transactions are governed by Title 48 RCW of the Insurance Code. Among other things, this title requires: (1) that insurers meet certain financial requirements; and (2) that agents, solicitors, and brokers of insurance comply with specified licensing standards. Financial and criminal penalties may result from noncompliance.

Certain transactions that fall within the definition of insurance have been addressed by exemption from Title 48 RCW or the creation of a specific regulatory structure. Entities regulated under these chapters may not be required to comply with the same capitalization and reserve requirements, reporting and solvency oversight, and claims handling practices as are required of an insurer selling a traditional insurance product.

In 1990, the Legislature created Chapter 48.96 RCW to regulate motor vehicle service contracts. A motor vehicle service provider is required to have a reimbursement insurance policy that covers all obligations and liabilities incurred by the motor vehicle service contracts issued by the provider.

In 1999, Chapter 48.110 RCW was created for the regulation of service contracts. A service contract provider may choose one of the following options to ensure that all obligations and liabilities are paid:

- insure their service contracts with a reimbursement insurance policy;
- maintain a reserve account that includes a portion of the gross consideration received for all service contracts and give the Insurance Commissioner (Commissioner) a financial security deposit; or
- maintain or have the parent company maintain a net worth or stockholder's equity of \$100 million.

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## **Summary of Substitute Bill:**

Chapter 48.110 RCW, the chapter regulating service contracts, is expanded to include motor vehicle service contracts. Numerous definitions are created including a definition of a protection product. "Protection product" means any product offered or sold with a guarantee to replace, or repair or to pay incidental costs if it fails to perform as stated in a written contract. "Protection product guarantee" is the written contract to repair, replace, or pay the incidental costs. "Protection product guarantee provider" is the person or entity that is contractually obligated to the purchaser of a "protection product."

### Registration

Service contract providers and protection product guarantee providers must register with the Commissioner. Application procedures, requirements, and fees are set forth. The Commissioner may suspend or revoke the registration of a service contract provider or a guarantee protection product provider or failure to comply with the specific requirements.

### Financial responsibility for service contact providers

In addition to the current financial responsibility options, a service contract provider may use a risk retention group (RRG) may insure the contracts of a service contract with a reimbursement insurer policy. A RRG must be in full compliance with applicable state and federal laws and meet specific financial requirements. The reimbursement policy must be filed with and approved by the Commissioner.

#### Financial responsibility for guarantee protection product providers

Protection product guarantee providers must insure all protection products under a reimbursement insurer policy issued by an authorized insurer or RRG. A RRG must be in full compliance with applicable state and federal laws and meet specific financial requirements. The reimbursement policy must be filed with and approved by the Commissioner.

#### Financial responsibility for motor vehicle service contract providers

Motor vehicle service contract providers must insure all motor vehicle service contracts under a reimbursement insurer policy issued by an authorized insurer or RRG. A RRG must be in full compliance with applicable state and federal laws and meet specific financial requirements.

#### Record-keeping

A service contract provider or protection product guarantee provider must keep accurate accounts and records including:

- the name and address of the person who purchased a protection product;
- a list of locations where the service contract or protection product is sold or marketed; and
- written claims files with the dates, amounts and descriptions of claims related to service contracts or protection products.

#### Investigations

The Commissioner may investigate a service contract provider and a protection product guarantee provider. Upon the Commissioner's request, the service contract provider or protection product guarantee provider must make the books, accounts, and records available to the Commissioner. The Commissioner may take actions to enforce the chapter and the Commissioner's rules and orders.

#### Motor vehicle service contract form filings - generally

Motor vehicle service contracts must not be sold or issued unless the form is filed with and approved by the Commissioner. This does not apply to contracts issued or sold by a motor vehicle manufacturer, an import distributor, a wholly owned subsidiary of a manufacturer, or a wholly owned subsidiary of an import distributor.

#### Provisions unique to motor vehicle manufacturers, import distributors, and subsidiaries of manufacturers and import distributors

A motor vehicle service contract does not have to be filed until 60 days after it is used if it is issued or sold by a motor vehicle manufacturer, an import distributor, a wholly owned subsidiary of a manufacturer, or a wholly owned subsidiary of an import distributor.

The service of process provision and many of the registration requirements do not apply to a motor vehicle manufacturer, an import distributor, a wholly owned subsidiary of a manufacturer, and a wholly owned subsidiary of an import distributor.

Audited financial statements are not required from publicly traded motor vehicle manufacturers or publicly traded import distributors.

Motor vehicle service contracts - disclosures and consumer protections

All motor vehicle service contracts must include specific disclosures. All motor vehicle service contracts must include information on how to file a claim. Purchases must be allowed to return the contract within 30 days if no claim is filed and receive a full refund less a designated cancellation fee.

Consumer Protection Act

The Consumer Protection Act applies to the Act. A violation of the Act is a violation of Chapter 19.86 RCW. A purchaser of a service contract or guarantee protection product may bring suit for a violation.

Exemption from Title 48

Persons selling and marketing service contracts and protection product guarantees are not required to register with the Commissioner unless they are service contract providers or protection product guarantee providers.

Repeals

Chapter 48.96 RCW, the chapter regulating motor vehicle service contracts is repealed.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on October 1, 2006.

**Testimony For:** New products are being developed that fall within the Insurance Code. In some cases, the full protections of the Insurance Code may not be required but some protections are needed to protect purchasers and make sure that they get what they purchased. The bill broadens the application of the current law so as new products are developed they can fit within a regulatory structure rather than needing a new law. The bill allows the use of a risk retention group. There are still some outstanding issues and all parties are working to resolve those concerns. The National Vehicle Protection Association (NVPA) has worked with Legislatures around the country to address issues related to vehicle protection products. Numerous states have passed legislation and many more have bills this year. The NVPA has worked with the Office of the Insurance Commissioner since the summer of 2004. A bill was sought last year but no compromise could be reached. This bill covers much more than just vehicle protection products. The NVPA is very pleased how this bill addresses vehicle protection products. The policy issues are resolved. The bill protects consumers. The risk

retention group provisions are welcome. Those entities should be adequately capitalized if they are involved.

(With concerns) There are additional issues but they are more technical in nature than policy. Property and Casualty Insurers that offer service contracts are concerned about some of the changes in the bill. Insurers will continue the discussions and hope to reach common ground.

**Testimony Against:** None.

**Persons Testifying:** (In support) Jim Tompkins, Office of the Insurance Commissioner; and Victor Smith and Mel Sorensen, National Vehicle Protection Association.

(With concerns) Mel Sorensen, Property and Casualty Insurers.

**Persons Signed In To Testify But Not Testifying:** None.